UNITED NATIONS

General Assembly

FIFTIETH SESSION

Official Records

SIXTH COMMITTEE
28th meeting
held on
Thursday, 2 November 1995
at 10 a.m.
New York

SUMMARY RECORD OF THE 28th MEETING

Chairman: Mr. LEHMANN (Denmark)

CONTENTS

AGENDA ITEM 142: ESTABLISHMENT OF AN INTERNATIONAL CRIMINAL COURT (continued)

This record is subject to correction. Corrections should be sent under the signature of a member of the delegation concerned *within one week of the date of the publication* to the Chief of the Official Records Editing Section, room DC2-794, 2 United Nations Plaza, and incorporated in a copy of the record.

Corrections will be issued after the end of the session, in a separate corrigendum for each Committee.

Distr. GENERAL
A/C.6/50/SR.28
14 November 1995

ORIGINAL: ENGLISH

95-81948 (E)

/...

The meeting was called to order at 10.25 a.m.

AGENDA ITEM 142: ESTABLISHMENT OF AN INTERNATIONAL CRIMINAL COURT (continued) (A/50/22)

1. Ms. CHATOOR (Trinidad and Tobago), speaking on behalf of the 13 member States of the Caribbean Community (CARICOM) that were Members of the United Nations, said that, although many complex issues remained to be resolved, she wished to reinforce the position maintained by the CARICOM countries since 1989 that the jurisdiction to try and punish perpetrators of international crimes should reside in an international criminal court and that jurisdiction should cover acts which shocked the conscience of mankind, thus warranting an international response. The establishment of the ad hoc Tribunals for the former Yugoslavia and for Rwanda in response to widespread and flagrant violations of the rules of international humanitarian law highlighted the need for a permanent judicial institution to address various forms of transnational criminality. The draft statute prepared by the International Law Commission constituted a good basis for the ongoing discussions, although many issues still required clarification and refinement. She did not wish to comment on substantive issues at the current stage, since some of the CARICOM countries' concerns had been raised in the Ad Hoc Committee on the Establishment of an International Criminal Court, but those countries were concerned about the form and procedures which must be put in place to ensure that the momentum for the establishment of the court was maintained. The CARICOM countries agreed that the time had come to enter into a new phase of negotiations; the Ad Hoc Committee had fulfilled its mandate, and the next step was to prepare a draft convention for adoption by a conference of plenipotentiaries. The CARICOM countries considered that a preparatory committee could be established with a mandate to prepare such a text and could meet for two to three two-week sessions in 1996. A considerable momentum had been created and a commensurate political will was required to avoid protracted discussions and ensure that preparatory work was completed in time for a diplomatic conference in 1997.

2. In order to ensure universality, it was important that all Member States should play a more active role in the second phase of the deliberations. The CARICOM countries were committed to doing their part to further the process. The invaluable work of the International Law Commission had brought the international community within reach of providing the instrument whereby perpetrators of serious crimes of concern to the international community could be brought to justice. The work and experiences of the Ad Hoc Tribunals for the former Yugoslavia and for Rwanda would be valuable during the discussions. The establishment of the international criminal court would not only contribute to the development of international criminal law, but would also enhance the international legal order and facilitate the enforcement of international law.

3. Mr. MAZILU (Romania) said that international law lacked an effective enforcement mechanism. The ad hoc approach, as employed by the Security Council in the case of the ad hoc Tribunals for the former Yugoslavia and for Rwanda, was not a satisfactory long-term solution to the problem of enforcing international law. Moreover, the current practice of trying international criminals before municipal courts was haphazard, unjust and militated against

the development of universal international law. The administration of international criminal law would only become systematic, just and universal with the introduction of a permanent international court.

4. Regarding the principle of complementarity, the draft statute should stipulate that the international criminal court complemented national criminal justice and did not preclude the existing jurisdiction of national courts. It was necessary to clarify the implications of that principle for the substantive provisions of the draft statute in such important areas of international judicial cooperation as surrender, transfer, detention, incarceration, recognition of decisions and applicable law. It was generally agreed that it was necessary to determine the crimes under the jurisdiction of the international criminal court, in order to safeguard the primacy of national jurisdiction.

5. Regarding the applicable law and jurisdiction of the court, the statute should satisfy the requirements of precision and certainty in criminal proceedings. Limiting the jurisdiction of the court to "core crime" under general international law would facilitate the adoption of a coherent and unified approach to the various requirements for the exercise of jurisdiction. That did not mean that the court could not be used as a further means for the peaceful settlement of disputes. The only way to avoid any ambiguity and to ensure the rights of the accused was to specify the constituent elements of each crime, in order to meet the requirements of the principles of legality (nullum crimen sine lege and nulla poena sine lege). The court's jurisdiction should, at least initially, cover the crimes of genocide, serious violations of the rules of war and crimes against humanity. He agreed that it would be difficult to determine whether individuals should bear criminal responsibility for aggression. Defining the relationship between the Security Council and the court in that matter gave rise to certain difficulties. The responsibility of the Council in qualifying a particular conduct as aggression did not deprive the court of a role in determining the criminal responsibility of individuals with regard to the planning, preparation or launching of aggression.

6. Regarding the State consent requirements, the international criminal court could not conduct an effective prosecution without the cooperation of the territorial State, nor could a prosecution be conducted unless the alleged offender was surrendered to the court by the custodial State. Given that, under general international law, the custodial State was in a key position to determine who should prosecute a crime, it would be necessary to clarify how much of that power the custodial State should cede to the international criminal court.

7. The statute should provide for the recognition and enforcement of orders, decisions and judgements of the court through continued and systematic cooperation with national authorities. The solution of that problem was related to the questions of jurisdiction, consent and complementarity. The terms and conditions of imprisonment should conform to international standards. Provision should be made for some form of communication channel between the international criminal court and the prisoner. The need to ensure protection of the rights of the accused by adhering to proper standards of due process should be borne in mind.

8. With regard to the method of work of the Ad Hoc Committee, he supported the proposal that it should take up one or two specific subjects at each session. It had a formidable task before it in elaborating provisions regarding penalties, individual criminal responsibility, procedure and rules of evidence. It should also endeavour to achieve greater consistency between the various parts of the draft statute, particularly between the preamble and the operative parts.

9. The establishment of the international criminal court as a permanent international body, thereby eliminating the practice of creating post-factum ad hoc tribunals, would serve as a deterrent against serious breaches of international humanitarian law and grave human rights violations. It would represent an important step forward in the progressive development of international law and in promoting a new and more just order in international life.

10. Mr. HAFNER (Austria) said that the establishment of an international criminal court, where individuals were judged by an international institution, would add a new dimension to international law. It was regrettable that the need for such an institution existed, but the fact that the community of States had not been able to prevent the crimes committed in and around Srebrenica, where thousands of innocent people had been killed, would remain forever on the international conscience.

11. In elaborating the draft convention on the establishment of an international criminal court, the International Law Commission had had to perform a task which was certainly not codification stricto sensu, but rather a progressive development of international law of a de lege ferenda nature. In doing such work, the Commission depended on extensive information from States on their positions; if that information was insufficient, its drafts might be subject to major modification. In that connection the Ad Hoc Committee had served the extremely important purpose of elucidating the positions of States.

12. The position of the member States of the European Union had already been presented by the representative of Spain but he wished to comment on certain issues not covered in that statement. On the subject of the jurisdiction of the court, primary consideration should be given to "core crimes" such as genocide, aggression, grave breaches of the rules of war and crimes against humanity. Should the difficulties involved in defining aggression prove insurmountable, it might be discussed whether the court could, initially, operate without jurisdiction over the crime of aggression. Treaty-based crimes need not be included within the jurisdiction of the court, at least during its initial phase. However, crimes covered by the United Nations Convention on the Safety of United Nations and Associated Personnel might be included, since application of that Convention was a genuinely international concern of the community of States. The international criminal court must be furnished with a jurisdiction which did not depend on any additional acceptance. The ratification or acceptance of the Convention on the court's establishment must suffice for that purpose, which would certainly be facilitated by restriction to certain core crimes.

/

13. The matter of the relationship between the jurisdiction of the future international criminal court and that of national courts could be settled by reference to the principle of complementarity, under which both jurisdictions would be guided by the same objectives of protection of justice, rule of law, effective prosecution, suppression and prevention of crimes of international concern. Only when national trial procedures proved ineffectual or inefficient in deciding such cases would the international community be entitled to have them dealt with by the international criminal court. That right ensued when such crimes were qualified as being of international concern, with the result that their prosecution was no longer the concern of a single State.

14. The statute should impose a clear obligation on States to cooperate with the court. The method and procedure of such cooperation should follow the guidelines of judicial assistance; there was no need to incorporate detailed rules governing that matter in the statute. It would, in particular, raise difficulties if officials of the court were entitled to carry out investigations within a State without its consent.

15. The rules governing the regime of extradition should not be applicable in the case of surrender of a suspect to the international criminal court. In particular, the right of a State to refuse to surrender a suspect should be limited.

16. In terms of the structure of the court, the powers of the presidency were too wide while those of the prosecutor could be broadened. His delegation agreed with the manner in which the relationship between the court and the Security Council had been defined by the draft statute; that was the best way to eliminate the need for more ad hoc tribunals and any potential competition between tribunals, which had initially motivated the establishment of an international criminal court.

17. The difficulties in elaborating procedural rules for an international criminal court arose from the existence of different national legal systems. The common law and civil law systems, in particular, ought to be reflected in the draft statute. One of the major functions of procedural rules was to guarantee a fair trial which ensured justice and protected the rights of all individuals connected with a case. In terms of punishment, the well-established principle nulla poena sine lege called for a clear indication of the maximum punishment for each crime.

18. A number of other problems remained to be solved, including that relating to the general principles of criminal law. The work should be completed as quickly as possible so as to move in the direction of a conference of plenipotentiaries. The time had come to establish a preparatory committee, which could be headed by the current Chairman of the Ad Hoc Committee, and to begin work on the actual draft text which, in combination with the International Law Commission draft, would form the basis of negotiations at the conference. The preparatory committee should meet in three two-week sessions, which would facilitate the allocation of agenda items within the sessions and ensure that each item was given equal time.

19. If that procedure were followed, the General Assembly could, at its fifty-first session, decide on the date and place of the conference of plenipotentiaries, which his delegation hoped would be held in 1997. In that connection, it welcomed the offer of the Italian Government to host the conference.

20. Mr. LAMPTEY (Ghana) recalled that at the forty-ninth session of the General Assembly, his delegation had called for accelerated action on the proposed international criminal court, but that the Sixth Committee had decided on a cautious approach based on the preliminary work of an ad hoc committee. He now acknowledged that the Ad Hoc Committee had usefully identified areas of consensus and items requiring further consideration and negotiation. However, the time for the establishment of an international criminal court was at hand, and the ad hoc committee mechanism should not delay that objective or usurp the functions of plenipotentiaries. His delegation therefore opposed extension of the mandate of the Ad Hoc Committee.

21. Ghana supported the establishment of a preparatory committee; however, its primary task should be, not further debate, but the preparation of draft provisions and the incorporation in its report of the issues to be considered at a conference of plenipotentiaries, which would convene in 1997 to conclude the treaty establishing the international criminal court.

22. He reiterated the views, which his delegation had expressed elsewhere, that the international criminal court, while linked to the United Nations, must be totally independent in its functions; that it must complement rather than supplant national criminal jurisdiction in cases where that jurisdiction was non-existent or ineffective; that, until the adoption of the draft Code of Crimes against the Peace and Security of Mankind, the court's jurisdiction should be limited to crimes whose horrendous nature was universally accepted; and that there were elements of aggression that might attract individual criminal responsibility and that might, therefore, fall under the jurisdiction of the international criminal court.

23. Ms. LEHTO (Finland) said that her delegation, which had taken an active part in the deliberations of the Ad Hoc Committee, fully endorsed the statement on the item made by the representative of Spain on behalf of the European Union.

24. In her statement to the General Assembly in September 1995, the Finnish Minister for Foreign Affairs had affirmed Finland's unequivocal support for the establishment of a permanent international criminal court. To maintain the momentum already gathered, it was time to move on to the next phase, namely, the establishment of a preparatory committee mandated to draft, within a reasonable period of time, a consolidated text of a draft convention. The convening of the conference of plenipotentiaries must not be unduly delayed.

25. In order to facilitate the work of the preparatory committee, agreement should be reached in advance on its programme of work for the coming year and the issues to be discussed at each session. Her delegation shared the view that the preparatory committee should hold a number of short sessions devoted to specific issues; that would allow delegations to prepare adequately and was more likely to produce concrete results.

26. With regard to the substantive content of the draft statute, a balanced approach was required in the area of complementarity. Care should be taken that any measures used to ensure the primacy of national jurisdictions did not render the international criminal court irrelevant. The court should be resorted to when it considered that national jurisdiction was either unavailable or ineffective.

27. The list of crimes falling within the jurisdiction of the court should be limited to "core crimes" - the most serious offences under general international law. That would not, however, preclude later expansion of the list if deemed necessary. The maxim nullum crimen sine lege should be fully respected: all crimes within the court's jurisdiction should be clearly and comprehensively defined.

28. The draft convention must include the fundamental principles of due process so that the rights of the accused would be fully protected. The convention should also set forth a general rule providing for close cooperation between the court and national authorities.

29. Her delegation joined the many speakers who had called for the widest possible participation in the preparations for an international criminal court.

30. Mr. CRISOSTOMO (Chile) said that the report of the Ad Hoc Committee reflected both the considerable progress made and the need for further work. His delegation welcomed the general consensus that the court should be established by means of a multilateral treaty rather than by a resolution of a United Nations organ. At the same time, it was convinced of the need for a clear and close relationship between the court and the United Nations, which would offer it legitimacy and political support.

31. The principle of complementarity should be part of the foundation of the court. The court should exercise jurisdiction only when national trial procedures were unavailable or ineffective. That implied a strong presumption in favour of national jurisdictions. The principle of complementarity, which was set forth in the preamble of the draft statute, should, however, be compatible with those provisions which did not reflect it fully.

32. With regard to jurisdiction, the court should initially be empowered to hear only cases concerning the most serious crimes, which had the most far-reaching international impact. While the list of crimes contained in article 20 of the draft statute was satisfactory, work was needed on defining the acts involved. In fact, the draft statute did not reflect clearly enough the principle of legality (nullum crimen sine lege). In contemporary law, that principle meant not only that an offence could be punished only where it violated a previous law but also that the law must precisely describe and define the punishable conduct (characterization requirement). Only specific acts, rather than gestures or words, were punishable by law. The standardization requirement was met in article 20, subparagraphs (a), (c) and (e) of the draft statute (Crimes within the jurisdiction of the Court). However, subparagraphs (c) and (e) contained subjective elements which might give rise to serious procedural difficulties. Subparagraphs (b) and (d) also failed to meet the characterization requirement because there was no universally accepted

definition of what constituted aggression or crimes against humanity. Those crimes should be more precisely defined in the draft Code of Crimes against the Peace and Security of Mankind. The crimes generally recognized as being the most serious crimes against humanity (genocide, apartheid, torture and the taking of hostages) were already included in article 20.

33. With regard to the crime of aggression, two problems arose: the lack of a precise definition, and the fact that under the mechanism established in article 23 of the draft statute the court could initiate prosecution for that crime only if the Security Council had made a prior determination that a State had committed aggression. Thus, the role of the court was to determine individual responsibility for the crime, not its existence. The court could not, for instance, decide that an act of aggression had not been committed or that the State declared to be the aggressor by the Security Council was actually the victim. That arrangement seriously limited the jurisdiction of the court, making it dependent on a determination made not through a legal process but by a political body, with the consequent risk of politicizing the functioning of the court itself. Yet, it would be unwise to vest the court with the power to determine the existence of an act of aggression since that might lead to a difference of opinion between the court and the Security Council, which was to be avoided. Furthermore, his delegation was concerned about the provisions of article 23 according to which a complaint related to an act of aggression could not be brought before the court while the Security Council was determining whether a State had committed the act of aggression which was the subject of the complaint. His delegation did not question in any way the authority of the Security Council and, in particular its permanent members, under the Charter of the United Nations. Nevertheless, other arrangements, which would ensure independence and autonomy for the international criminal court, should be sought.

34. The system provided under article 21 (Preconditions to the exercise of jurisdiction) was satisfactory. According to that article, the court, in relation to the crime of genocide, had inherent jurisdiction and, in relation to the remaining crimes, could exercise jurisdiction with the consent of the State involved. States had adequate flexibility in terms of accepting the jurisdiction of the court in that regard. It was also noteworthy that jurisdiction could be accepted by either the State which had custody of the suspect or the State on whose territory the act in question occurred. The custodial State should be defined clearly as the State which actually had custody of the suspect, rather than a State which had issued arrest warrants.

35. His delegation also welcomed article 22, paragraph 4, under which a State which was not a party to the statute had the right to consent to the court exercising jurisdiction over a particular crime. The international criminal court would, in that respect, be going a step beyond the International Court of Justice, which was appropriate in the light of developments in international law.

36. The statute had rightly excluded any requirement of acceptance by the State of which the suspect was a national. While such a link was easy to identify, it should not replace the claims of either the custodial State or the State on whose territory the crime was committed. It would only complicate matters to

add the State of origin to the list of States which could accept the court's jurisdiction. At the same time, according to the principle of complementarity, it was logical, as provided in article 21, paragraph 2, that in the case of an extradition request, the State making the request was also required to consent to the jurisdiction of the court.

37. Under the draft statute the authority to bring complaints before the court was generally limited to States Parties to the statute or the Security Council. No provision was made for complaints to be brought by victims of crimes or their families. In his delegation's view, such a right must be recognized. The court was essentially conceived as a means of protecting individuals rather than States, and it was paradoxical that in cases involving crimes against humanity, individuals could not have recourse to the court's jurisdiction.

38. Article 26 (Investigation of alleged crimes) authorized both the prosecutor and the presidency to decide whether grounds existed for prosecution and consequently provided adequate safeguards against the risk of placing too heavy a burden on the court.

39. The draft statute limited the court to jurisdiction in the case of disputes. In his view, the court should also be entitled, at the request of a State party to its statute, to provide an advisory opinion to national courts with regard to the interpretation of treaties dealing with international crimes. In that connection, he wished to recall the important advisory role played by the International Court of Justice and the Inter-American Court of Human Rights. As a body operating in an entirely new field, the international criminal court could make a very valuable contribution in an advisory capacity, provided that the following limits were set: the advisory capacity should be limited to States parties to the statute; the advisory opinions would not be binding on States; and the court would have the right to refuse to provide an opinion if it was convinced that the request had been made in order to put pressure on a national tribunal with regard to a pending case.

40. Lastly, with regard to the future course of work, his delegation would remain flexible in order to join in any consensus which would rapidly bring about the establishment of an international criminal court.

41. Mrs. GOLAN (Israel) said that while the Ad Hoc Committee had made good progress, much work remained to be done. For example, the important question of the inherent jurisdiction of the court, even if limited to the crime of genocide, remained unresolved. A ground-breaking international judicial procedure had been proposed and must be studied carefully. It was important not to create a situation which would allow individual States to make use of the inherent jurisdiction of the court to harass other States, for political ends or propaganda, by filing baseless charges. One way of mitigating that danger would be to require that charges relating to crimes over which the court had inherent jurisdiction could be filed only by a large and diverse group of countries, demonstrating that the issue had given rise to widespread concern.

42. The role of the prosecutor was also problematic. Under the draft statute, the prosecutor acted as both policeman and court official. He was accountable only to the president of the court who, by virtue of his initial supervision of

the prosecutor, risked compromising his impartiality during the later stages of the proceedings.

43. Another complex matter for which no satisfactory solution had been found was the acceptance of the court's jurisdiction by the State of which the accused was a national. No State could claim to act in the best interests of its citizens and at the same time relinquish all responsibility towards them. No problem arose where the State accepted the jurisdiction of the international criminal court. However, a State might claim, for its own reasons, that an indictment was groundless. Again, requiring that the complaint should be made by a group rather than a single State would help ensure its validity.

44. The jurisdiction of the court should be confined to the most serious crimes, namely, the crime of genocide, serious violations of the laws and customs applicable in armed conflict and crimes against humanity. Her delegation was opposed to the inclusion of the crime of aggression on that list because it was, generally speaking, a crime committed by one State against another and was not easily definable in terms of individual responsibility. The definition adopted by the General Assembly in its resolution 3314 (XXIX) had been intended to guide the Security Council and was not concerned with acts of aggression committed by individuals. For inclusion in the draft statute, a crime must be defined in terms of attribution to individuals and not solely to States.

45. Her delegation attached great importance to the principle of complementarity. That principle, which was reflected only in the preamble, should also be included in the operative part of the statute.

46. Her delegation also firmly supported the primacy of national jurisdiction. In its view, the statute was not based on such primacy. It was, for example, silent on the issue of whether the international criminal court or national courts had priority with regard to jurisdiction. In fact, as it stood, the statute provided that the court which was first seized of a complaint would have jurisdiction. Furthermore, according to article 42 (Non bis in idem), a domestic court could not be authorized to review a case already dealt with by the international criminal court whereas a person who had been tried by another court could be tried, in certain cases, under the statute.

47. The principle non bis in idem was not reflected clearly enough in the draft statute. For example, according to article 42, the court was authorized to try an individual for certain crimes, if that person had already been tried for a particular act in another court and the act had been characterized as an ordinary crime. Article 42 also introduced subjective criteria with regard to the review of the proceedings in the domestic court, which might make application difficult in practice.

48. The procedure of apprehension and surrender should be carried out according to the traditional system of extradition, under which the national jurisdiction had the right of independent judicial review, thereby safeguarding the rights of the accused. The statute should incorporate the right to refuse to surrender an individual on the grounds that he was accused of a political offence or in order to safeguard his nationality. Procedures for judicial assistance should be

based on the cooperation of national jurisdictions, by means of their procedures of implementation, and should ensure the fundamental human rights of the accused. The statute should also provide that the extradition request could be refused if the execution of the request was likely to prejudice the sovereignty, security, public order or other essential interests of the requested State.

49. A clear definition of the crimes subject to the jurisdiction of the court was essential for it to function effectively

50. In terms of future work on the topic, her delegation favoured a step-by-step approach. The proposal to hold additional meetings the following year to discuss the major substantive issues was a constructive step in that direction.

51. Ms. FLORES (Mexico) said that her delegation welcomed the efforts to establish an international criminal court and was prepared to contribute actively. Such a court would help States to realize their goal of cohabiting in a world under the rule of law. The court must function in an effective, independent and impartial manner and, to achieve that end, account should be taken of the existing legal framework which governed relations between States.

52. The international criminal court must be based on the assumption that the administration of justice on its territory was a fundamental obligation and irrevocable duty of every State. The court was not a substitute for national jurisdictions and should only have jurisdiction where national systems did not exist or, for reasons which must be specified, it was not possible to administer justice at the national level. The effectiveness of the court would depend on its respect for the principle of complementarity.

53. To ensure its independence and impartiality, the court must be free from all outside influence and that safeguard should be incorporated in its statute. To ensure that the draft statute was acceptable to a large number of States, the jurisdiction of the court should be limited to crimes which were exceptionally serious, international in magnitude and scope and were accepted as such by a large number of States, within the framework of respect for the principle nullum crimen sine lege. Too broad a jurisdiction rationae materiae might make the court less effective by compromising its universality and moral authority. The effectiveness and credibility of institutions linked with the United Nations must be safeguarded

54. The work of the Ad Hoc Committee had been of great value. Her delegation was convinced that States must reach agreement on certain basic questions before a preparatory committee could be established and was in favour of setting up for that purpose an open-ended working group with wide participation and a broader mandate. Lastly, it welcomed the offer of the Italian Government to host a conference of plenipotentiaries.

55. Mr. KOLODKIN (Russian Federation) said that for the first time there were real prospects for the establishment of a permanent international criminal court. With the establishment of the court, responsibility for violations of international law would be borne not only by the State, but also by the individual. His delegation was in favour of initiating work on the text of a

convention to establish the court and on the convening of a conference for the adoption of the convention.

56. His delegation agreed that the court's jurisdiction ratione materiae should extend to the most serious crimes; it should first and foremost cover genocide, crimes against humanity, war crimes and aggression. Taking into account the differences of opinion with regard to the inclusion of aggression, his delegation had proposed the inclusion in the statute of a crime consisting of the planning, preparation and conduct of a war of aggression; the Security Council would determine the existence of aggression as a necessary prerequisite for the exercise of the court's jurisdiction. Some of the so-called treaty-based crimes were crimes under general international law, while others, in particular illicit drug trafficking, could be covered within the framework of national jurisdiction. Terrorist crimes could be taken up by the court; however, so as not to overload it with such cases, its competence should extend only to the most serious terrorist crimes which posed a threat to international peace, and only in cases which had been referred to it by the Security Council. Such crimes would then constitute "hard core" crimes.

57. His delegation felt that the statute should provide for the possibility of supplementing the list of crimes that were subject to the court's jurisdiction, under appropriate conditions. At the current stage, the achievement of compromise on the issue of competence ratione materiae was the most important consideration and would make it possible to resolve other issues, especially the problem of the interrelationship between the court and the Security Council and the issue of the court's inherent jurisdiction. If the court's competence included only hard-core crimes, the issue of its inherent jurisdiction in relation to crimes other than genocide needed careful consideration.

58. The difficulties involved in establishing the court should not be exaggerated. The court would not be created in a void since two ad hoc Tribunals had already been established. His delegation hoped that the court would function on the basis of international standards of criminal procedure that corresponded to the basic requirements of just and due criminal process of all the main legal systems and ensure appropriate protection for human rights in criminal proceedings. In terms of the procedural aspects, there was no fundamental difference between the ad hoc Tribunals and a permanent court. Thus the problems related to the institution of proceedings in the court were not insurmountable.

59. The establishment of the ad hoc Tribunals had demonstrated that the international community could no longer tolerate flagrant violations of international law and was prepared to establish the international criminal responsibility of individuals for crimes under international law. It had become clear that a permanent court was necessary, established on the basis of a universal international treaty, rather than ad hoc tribunals instituted ex post facto. The General Assembly should adopt a resolution establishing a committee to prepare for a conference and strictly define its mandate and schedule of work for 1996.

60. Mr. AL-SHAMMAM (Yemen) said he welcomed the proposed establishment of an international criminal court by means of a multilateral treaty drafted and

adopted at an international conference to which all States would be invited. The establishment of a single court would obviate the need to establish ad hoc tribunals for each crime. Such a court should be free from political pressure with a view to commanding international respect and performing its functions to the fullest, and the crimes within its jurisdiction should be defined pursuant to international law and the draft Code of Crimes against the Peace and Security of Mankind. The judges of the court, as well as the presidency, the registrar and the prosecutor, should be appointed on a full-time basis, with judges being elected on the basis of nomination by national groups in accordance with the principle of equitable geographical representation. The judges should have criminal trial experience and competence in international law, as well as practical expertise consistent with the character of the court. The procedures for their nomination and election applicable in the context of the International Court of Justice and the International Tribunal for the former Yugoslavia would afford better guarantees of independence and universality. The prosecutor should have the consent of interested States before initiating investigations and prosecutions, while the role of the Security Council should be consistent with its primary responsibility for the maintenance of international peace and security, without reducing the credibility and authority of the court, undermining its independence or introducing an inappropriate political influence over its functioning. A distinction should also be drawn between the ad hoc Tribunals instituted by the Security Council under Chapter VII of the Charter of the United Nations and the future permanent court to be established on a consensual basis by the States parties to its statute.

61. In connection with due process, he agreed with the general observations contained in document A/50/22, paragraph 29, adding that the relevant provisions should be formulated in such a way as to allow for the application of standards contained in relevant human rights instruments. He also agreed with the views contained in the report concerning cooperation between States parties and the court, while the principle of complementarity required further elaboration so that its implications for the substantive provisions of the draft statute could be fully understood. As for the budget, he favoured the approach whereby the costs of the court would be financed from the regular budget of the United Nations with a view to ensuring its universal character and a measure of financial independence. Further discussion of the major issues involved would be required, with a view to the establishment of an effective international criminal court which enjoyed moral authority, independence and universal support.

62. Mr. MATRI (Libyan Arab Jamahiriya) said his delegation supported the international efforts to establish a new international criminal court that try crimes against the peace and security of mankind, as well as war crimes and crimes against humanity. He hoped that the establishment of such a court would preclude disasters which had damaging effects, such as the Lockerbie case, which resulted from the failure to comply with the provisions of the 1971 Montreal Convention for the Suppression of Unlawful Acts against Civil Aviation. In view of the desired goals, the international criminal court should be established on objective legal bases without the involvement of political elements. It should also be fully independent and ensure that defendants had as many rights and guarantees as possible with a view to a fair and impartial trial.

63. He supported the inclusion of aggression among the crimes falling within the jurisdiction of the court, a course which was not precluded by the fact that aggression per se remained undefined. His country vehemently opposed the proposal contained in article 23 of the draft statute concerning the referral of a matter to the court by the Security Council; linking a political body such as the Security Council with a judicial body would have the pernicious effect of shaking confidence in the latter's impartiality. Experience had shown that Security Council resolutions were influenced by and coincided with the positions and interests of Security Council members. Moreover, its permanent members enjoyed the right of veto. The aforementioned proposal would not therefore encourage many States to approve the draft statute. Lastly he believed that the members of the Procuracy should not simply be of different nationalities; they should also represent different legal systems, and article 12 of the draft statute should be revised accordingly.

64. Mr. BJØRN LIAN (Norway) said that the establishment of an international criminal court was a matter of peace-building and of securing the rule of law. The establishment by the Security Council of the ad hoc Tribunals for the former Yugoslavia and for Rwanda and the repeated massive violations of humanitarian law in several regions demonstrated the need for a permanent, global mechanism to tackle the most serious international crimes. Lack of global jurisdiction should no longer prevent international prosecution in cases of insufficient national jurisdiction. The growing support for the idea of such a court showed that such a mechanism was finally possible.

65. The draft statute for an international criminal court was a valuable basis for negotiation, but improvement and clarification were needed on certain points. The court should not absolve States from their responsibility to prosecute violations of humanitarian law, and its role should be limited to cases where national jurisdiction was unavailable or ineffective; however, it must be competent, if necessary, to make such a determination. The court should focus on the most serious crimes which constituted breaches of universally recognized principles of international law, namely genocide, the most serious war crimes, and crimes against humanity. Norway was not convinced that crimes of aggression could be dealt with in a nonpoliticized way by the court. The proposal to review the list of crimes after a number of years to consider the inclusion of additional crimes might provide a vehicle for a consensual approach on the matter. The court should have inherent jurisdiction regarding that limited list of crimes, and State consent should not be required beyond the general consent given by virtue of becoming a party to the statute for the court.

66. Work on the establishment of the court should focus on result-oriented textual negotiations rather than on academic and political debate. He welcomed the Ad Hoc Committee's recommendation for the drafting of texts to be considered by a conference of plenipotentiaries, and felt that such negotiation should be carried out by a preparatory committee with a broader participation of Member States in order to seek consensus for universal acceptance of the statute.

67. He asked the Sixth Committee to support the drafting of a resolution under agenda item 142, calling for the establishment of a preparatory committee with a clear mandate for that committee to conduct textual negotiations and requesting

the General Assembly at its fifty-first session to decide upon the convening of an international conference of plenipotentiaries to conclude a convention on the establishment of an international criminal court and setting the expected time and duration of that conference.

68. Mr. ELARABY (Egypt) said that contemporary events demonstrated the need for the establishment of a permanent international criminal court; the ad hoc tribunals that had been hastily established in response to crises did not constitute a permanent or effective solution. There had been too many situations since the end of the Second World War in which crimes had been committed with impunity. The establishment of an international criminal court would put an end to that situation and serve as a deterrent against such crimes. It would further enhance the effectiveness of national justice systems in combating international crimes such as terrorism, drug trafficking, illicit traffic in women and children and torture. It should provide an effective and fair system of international investigation, prosecution and adjudication of certain international crimes and complement, but not take precedence over, national justice systems.

69. The court's jurisdiction should be limited initially to the four major crimes of aggression, genocide, crimes against humanity and serious war crimes. The triggering mechanism for each crime could be different; in some cases, the Security Council should be able to refer issues to the court. However, the crimes must be defined in the statute, in order to satisfy the requirements of the principle of legality. The triggering mechanism and the relationship between the court and national criminal justice systems must be delineated clearly. The statute must include rules of procedure and of evidence that conformed to international standards for due process of law and the necessary provisions on international cooperation and enforcement.

70. The Ad Hoc Committee's two plenary sessions had revealed the widespread support among delegations for the establishment of the court and for the convening of a diplomatic conference to adopt the court's statute. His delegation encouraged all delegations to join the emerging consensus of setting 1997 as the date for the diplomatic conference.

71. The Ad Hoc Committee would have made more progress if it had had a clearer mandate from the General Assembly in resolution 49/53. The preparatory committee should be given a clear mandate to begin drafting a consolidated text, based on the draft statute, for submission to the General Assembly at its fifty-first session and consideration by a diplomatic conference. The preparatory committee should establish two working groups to work simultaneously on substantive and procedural aspects of the draft statute, since they were closely interlinked.

72. In order to ensure the universality of the court, as many countries as possible, particularly developing countries, must participate in the drafting of the statute. A concrete timetable must be established for the drafting process. At the first session of the Ad Hoc Committee, a different status had been given to different working papers, particularly with regard to their inclusion in the report; all working papers must be treated equally and should appear in the report in order to enhance transparency. Appropriate representation and

geographical distribution of the developing countries must be reflected in the offices of the working groups of the preparatory committee.

73. The international community could not wait until all the problems concerning an international criminal court were solved before starting to draft its statute. The General Assembly must take a clear and unequivocal position in favour of establishing the court and set clear deadlines for the completion of the statute in 1996 and the convening of a diplomatic conference in 1997.

74. Mr. CHEE (Republic of Korea) said that the international criminal court would implement the ideals of the United Nations embodied in the Charter and serve to preserve world order in peace and justice. The United Nations must move on towards the establishment of the court.

75. On the principle of complementarity, his delegation agreed that the court should function where national courts were not available or proved to be ineffective in dealing with the international crimes specified under the statute. It was important for the jurisdictional boundary between national courts and the international criminal court to be drawn as clearly as possible to avoid unnecessary overlapping in the administration of justice over international crimes. The international criminal court should play a primary role in dealing with core crimes; his delegation was not in favour of including treaty-based crimes for the reasons cited in paragraph 81 of the Ad Hoc Committee's report.

76. His delegation supported the idea that the statute should cover the most serious crimes of concern to the international community. It did not favour granting inherent jurisdiction to the court except for the crime of genocide, since the court would be established by a treaty and would exercise its jurisdiction under that treaty. However, the rule of international law with regard to genocide was so well established that no dispute could arise about the jurisdiction of a State or international organ over that crime.

77. Mr. ZELLWEGER (Switzerland) said that certain crimes, particularly those perpetrated in the context of international or non-international armed conflicts, required the intervention of organs constituted by the international community. It was no longer possible to establish an international ad hoc tribunal for each such conflict, a practice which was costly, invited contradiction among the various ad hoc tribunals and hindered the formation of a consistent judicial practice. The proposed court should therefore be permanent in nature. The work of the Ad Hoc Committee had revealed the merits and failings of the draft statute for an international criminal court and had allowed States to express their positions and identify points of disagreement.

78. It was now time to set up a preparatory committee for a conference of plenipotentiaries, which would be responsible for drafting the definitive statute of the international criminal court. That committee should examine the provisions of the draft statute with a view to determining their acceptability, providing alternatives, if necessary, and preparing a consolidated text, as proposed in the report of the Ad Hoc Committee. Switzerland agreed, for the most part, with the Ad Hoc Committee's suggestions for future work; however, it felt that the preparatory committee should hold three two-week sessions and

complete its work by the end of 1996. It should begin by tackling the major issues of complementarity, the crimes to be dealt with by the court, and the competence of the court, which were all closely linked.

79. His delegation rejected the idea that complementarity gave absolute priority to national jurisdictions, allowing the court to intervene only when national courts were wholly without competence. The concept of complementarity should also include action in situations where national jurisdictions might have acted, but had failed to do so or had acted wrongly. Complementarity was at times a subsidiary, at times a corrective, function, but the court must not interfere in situations where its intervention was neither desirable nor desired.

80. His delegation agreed that the crimes covered by the statute should be limited to war crimes, acts of genocide, violations of the laws and customs applicable in armed conflict, and crimes against humanity, all of which were forbidden under customary international law, and that treaty-based crimes such as those linked to drug trafficking and terrorism should be deleted. His delegation remained flexible on the question of aggression but noted that it was a crime primarily of States rather than individuals.

81. The reduction of the list of crimes to be dealt with by the future court and a judicious interpretation of the concept of complementarity should make it possible to give the court automatic or obligatory jurisdiction over those crimes for which it was competent; that was essential, not only for reasons of principle but also on technical grounds. A compromise concerning complementarity, definition of crimes and competence should provide a basis for the solution of other problems, such as those concerning applicable law, rules of procedure and judicial cooperation.

82. There had, perhaps, been too much insistence during the work of the Ad Hoc Committee on potential obstacles to the establishment of an international criminal court. The task was difficult, but not impossible, given the quality of the draft statute and the existence of the statutes for the ad hoc Tribunals for the former Yugoslavia and for Rwanda; if the necessary political will were present, the technical problems could be solved.

83. Work on the international criminal court should be coordinated with the continuing work on the draft Code of Crimes against the Peace and Security of Mankind since the two were closely linked, especially in the area of the definition of crimes. The recent convergence of the work by the International Law Commission and the Ad Hoc Committee, leading to a reduction of the list of crimes to be covered, was a positive but not sufficient step, and future work on the subject should follow a single course.

84. His delegation supported the Ad Hoc Committee's suggestion for the establishment of a preparatory committee open to all States and with a mandate for both discussion and negotiation. That committee should submit to the Sixth Committee, in 1996, a report including a consolidated draft statute to serve as the basis for a conference of plenipotentiaries. The preparatory committee should meet over a six-week period in 1996, preferably in three two-week sessions, and should give priority to studying complementarity, definition of

crimes, and the competence of the future court, including the mechanisms for its jurisdiction, in order to achieve consensus on those points. It should take into account the statutes of the Ad Hoc Tribunals for the former Yugoslavia and for Rwanda and the recently expressed preference of the International Law Commission for a restrictive definition of crimes.

85. Mr. WOLZFELD (Luxembourg) said that his delegation endorsed the views expressed by the representative of Spain, speaking on behalf of the European Union. Recent tragic events had shown that the international system was unable to react adequately to massive human rights violations and large-scale international criminal activity. The creation of the Ad Hoc Tribunals for the former Yugoslavia and for Rwanda had been selective responses to specific situations; there was a need for a permanent and universally accepted body capable of responding rapidly to such crises. Such a body, linked to the United Nations system and established on a solid legal basis accepted by all States, would be a useful tool which would allow the international community to prosecute and punish those guilty of particularly serious crimes whose hateful nature constituted an insult to the human conscience.

86. The future court should complement national judicial systems whenever they were not competent or were ineffective in prosecuting such crimes. Its competence should be limited to the most serious crimes against humanity or massive and serious violations of the norms and customs of international humanitarian law. It was essential that the statute should establish the obligation of States to cooperate fully with the court and guarantee the transfer of accused persons. The statute should also contain a provision allowing for the periodic re-examination of the court's competence in the light of experience.

87. The work of the Ad Hoc Committee had been satisfactory, and it would now be desirable to set up a preparatory committee for the future conference of plenipotentiaries. That committee, which would be open to participation by all States, would make it possible to clarify certain questions and would report on its work to the General Assembly at its fifty-first session.

The meeting rose at 12.50 p.m.